Canada. Banking and Commerce, Standing Committee on (Senate), 1937

2nd SESSION, 18th PARLIAMENT, 1 GEORGE VI, 1937

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

ON

BILL 41, AN ACT TO AMEND AND CONSOLIDATE THE COMBINES INVESTIGATION ACT AND AMENDING ACT

No. 1

The Honourable Frank B. Black, Chairman

WITNESS:

The Honourable Norman McL. Rogers, P.C., M.P., Minister of Labour.

MEMORANDUM

From the Parliamentary Counsel of the Senate.

OTTAWA
J. O. PATENAUDE, I.S.O.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1937

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Frank B. Black, Chairman

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MINUTES OF EVIDENCE

THE SENATE,

THURSDAY, April 8, 1937.

The Standing Committee on Banking and Commerce, to whom was referred Bill 41, an Act to amend and consolidate the Combines Investigation Act and amending Act, met this day at 11 a.m.

Hon. F. B. Black in the Chair.

The CHAIRMAN: Is it the pleasure of the Committee to take up the consideration of the Bill? There is a document in the hands of the leader of the Senate, Senator Meighen and myself, prepared by the Law Clerk.

Right Hon. Mr. MEIGHEN: I think it should be read.

Hon. Mr. DANDURAND: It consists of two parts. One bears on the danger of invading provincial jurisdiction; the other bears on possible amendments that could be made to certain clauses.

Right Hon. Mr. MEIGHEN: Consistent with its present purposes.

Hon. Mr. DANDURAND: So I would suspend the reading of the first part, which covers the whole constitutional issue, and as we are going to examine the Bill clause by clause, we could examine into any suggestion Mr. O'Connor has for the improvement of the Bill.

Right Hon. Mr. MEIGHEN: I do not agree. Mr. O'Connor's attack on the Bill is not on this clause or that.

Hon. Mr. DANDURAND: I am speaking of the second part.

Right Hon. Mr. MEIGHEN: He says do what you will as to the second part you are still unconstitutional. He says the whole Bill in its objects and substance is in violation of the constitution. I do not think there is much use going into amendments that will still leave the Bill vulnerable, if he is right.

Hon. Mr. COTÉ: Why in the name of goodness should we be deprived of hearing an opinion as to whether this law is constitutional or not?

Hon. Mr. DANDURAND: The approach from that angle does not destroy the Bill. It affects a certain number of clauses.

Hon. Mr. MORAUD: I move that the Chairman read the opinion.

The CHAIRMAN: I think this is fair material for the members of the Committee. I think, with due deference, that they ought to know what is in the first part of the memorandum.

Hon. Mr. COTÉ: After it is read I think it ought to be circulated so that we can read it and come to our own opinion.

The CHAIRMAN: Is it the pleasure of the Committee that I read this comment furnished by the Law Clerk?

Some Hon. SENATORS: Carried.

The CHAIRMAN: This is the memorandum supplied to the Committee by the Law Clerk of the Senate, Mr. O'Connor, and it is addressed to Senator Dandurand, Senator Meighen and myself.

The LAW CLERK: Being a documentary opinion it is supplied by me in my capacity as Parliamentary Counsel. As Law Clerk I take directions.

The Clerk of the Committee (reading):—

This Bill is unique in that although purporting in terms to serve "the interests of the public" it has been bitterly assailed in the other Chamber as an assault upon the liberties of the public.

If the charge laid against the Bill be assumed to be seriously made and possibly true then it is necessarily the most important Bill of the session.

It certainly goes very far beyond the provisions of the present or any previous Combines legislation. In places, the existing section of the Act is used just as a skeleton about which to wrap new repressive provisions, different in nature from those which now exist.

The explanatory notes are not to be depended upon in all respects.

In these circumstances it is my duty to advise as to the character and constitutionality of the Bill.

I have to advise that in my opinion the Bill, as a whole, amounts to an invasion of personal anl property rights of citizens of the provinces who, being, at the time of the invasion, according to the theory of the legislation (which is that it is purely investigatory), not merely innocent but not even alleged to be otherwise than innocent, do not fall within the Dominion power "the criminal law" in such a sense as to enable treatment of them as if they were guilty, or more severely than if they were guilty, of crime.

Under the proposed legislation, necessarily, everybody concerned is a mere witness or a suspected, but unaccused, person. He is necessarily a resident of a province, protected under the laws of the province, trustee of Magna Charta and following charters of liberty, as to his person and his property unless he has so contravened the law of his country that it may be justly said, in the interest of the public, that, qua his offence he has lost these rights. The Dominion, to have the right to invade these provincial rights to the security of the person and property of the subject, must found its right upon some Dominion legislative power of the B.N.A. Act. If it defines a crime and brings the subject under it it can trench upon these provincial rights, but not otherwise. True, Bill 41 defines a crime but it is a crime for which nobody is answerable until all of the machinery of the Bill has been resorted to, exercised and executed,—that machinery being designed and supported on the ground that it is necessary to discover whether any crime exists at all. Then why, it may be asked, did the Judicial Committee support the power of the Dominion to enact the legislation of 1923? The answer is that it was established in the Privy Council only that the Dominion had power to enact that defined matters constituted crime and that the 1923 legislation did not contain the invasions of provincial rights which this Bill presents. The Bill now proposed is, as a whole, different in principle from that which was sustained in the P.A.T.A. case. This Bill is, throughout, "raid and seizure" legislation. Suppose the raid and seizure provisions of the Bill to have been enacted separately could they be supported? No. If added to a Bill the pith and substance whereof fell within the Dominion powers they could be supported (so far as bare legality is concerned) if they were necessarily ancillary to the completion of a well rounded Act designed to achieve a lawful purpose. But, apart from investigatory provisions the Bill contains only one clause (32) about which the now assailed provisions can be wrapped, if at all. That clause (32) as pointed out in the P.A.T.A. case, is one that is (per clause 31) only brought into operation after the investigation provisions are spent. The investigatory provisions of this Bill are essentially different (in the sense already explained) from those of the Act of 1923. Parliament, it may be held (if this Bill be enacted) had improperly sought to assume to itself, under the guise of "criminal law" legislation, powers which it could not lawfully assume otherwise, to invade the personal and property rights of everybody in the provinces. The Criminal Code contains machinery for preliminary examination of persons accused of crime, with incidental rights, by way of search warrants, to be had from denom-

inated courts, to seize and take away property. I shall refer later on to the extraordinary, indeed the shocking provisions of Bill 41, proposed to be exercised against unaccused persons, as compared with those of the Criminal Code, exercisable against accused persons.

Dominion jurisdiction over Combines hangs, and always has hung, by a hair. The P.A.T.A. case was not decided until about eight months after it was argued. This delay in decision does not indicate that the Judicial Committee found it easy to reach a decision. In my opinion, if the Dominion desires to retain its jurisdiction over combines the Act as it stands should not be repealed, as is proposed by clause 42.

The most important of many alterations of the existing law which are proposed by the Bill I now proceed to disclose in the form of suggestions for consideration. They are annexed hereto.

I am not proposing any amendments to the Bill. I think that nothing that I could propose by way of amendment could save this from being an invalid Bill unless I should propose amendments involving a reversal of the policy of the Bill. This would be beyond my province.

April 7th, 1937.

W. F. O'CONNOR,
L. C. & P. C. Senate.

First Suggestion (Clause 2)

Re page 1, line 18 of the Bill.

The words "a common cost of storage or transportation,—or" have been dropped. This materially weakens the Act. The explanatory notes err in stating that what has been dropped has been "already covered". Fixation of a common price or common costs is dealt with only in subparagraph (iii) itself.

Second Suggestion (Clause 7)

Re page 4, line 4, of the Bill.

I suggest consideration of the substitution of "nineteen" for "seventeen". Clauses 17 and 18 originated as part of the Cost of Living Regulations of 1916. They are designed (note the words "from time to time" in clause 17) to provide authority for compelling continuous reporting in answer to written questionnaires, sent out to many persons (doing business as, say, bakers or coal dealers) not because they are suspected "combinesters" but to ascertain what are prevailing costs or prices. Such a system, while it can be satisfactorily operated from Ottawa by the Commissioner himself, seems to be inapplicable to "special commissioners" who are out upon a special investigation of a particular suspected combine. These special commissioners are on the ground. They can expeditiously call before them the person whose evidence is desired. Why should they write for it, and be bound by clause 18 to wait for an answer, instead of proceeding at once, as they may under section 19? A special commissioner will not have been appointed at all unless the Commissioner "believes" that the person concerned may be a party or privy to a combine, and other persons, unsuspected and unnamed, ought not to be subjected to investigation at all.

Third Suggestion (Clause 18)

Page 6, line 3 and page 6, line 28 of the Bill.

Consider the substitution of "proper officer" for "officer or servant" in line 3 and the substitution of "or officer" for "officer or servant" in line 28.

No servant is compellable, at law, in manner proposed by the Bill. See Halsbury's Laws of England, Vol. 13 of 2nd Edition, page 738, and section 35 of the Canada Evidence Act.

In reading this clause 17 note that the required disclosure of the contents of documents is not production of the documents and that Clause 35 of the Bill enables the investigated person to protect himself against answers or disclosures to which privilege attaches.

Fourth Suggestion (Clause 19)

Consider whether the distinction, which clause 19 introduces, between offences against the Combines Act and other offences, is intended. The clause, as proposed in the Bill greatly alters its equivalent in the existing Act.

An explanatory note states, in error, that the clause is one that "clarifies the power to obtain books and records." The existing Act contains no such power.

The clause as written immensely extends, against the liberty of the subject, the provisions of section 629 of the Criminal Code, concerning search warrants.

If the crime involved were conspiracy to murder, instead of, say, conspiracy to raise the price of a commodity, and, say, the Attorney General of a province, who administers justice in his province, desired a search warrant to search for, say, explosive bombs, he could secure the warrant only upon proceedings in court under oath, before a justice, whom he must satisfy that there is reasonable ground for believing that indicated evidence of the specified crime exists and can be found in a particular building or place.

Compare the provisions of Clause 19. The Commissioner (or special commissioner) need merely believe (there is no requirement of reasonable grounds) that any person "may be a party or privy, etc.," whereupon he may enter, seize and take away anything that he finds if he believes that it may contain information as to an offence. This authorizes the seizure of every book and paper of the person concerned, whether or not in fact relevant to the enquiry. It is "raid" legislation. To condescend to examination before seizure under it, would be foolish. Why take the trouble? Thus, entire innocence demonstrable upon examination before seizure, is made neither protection nor defence against a real wrong. Can this be intended? The existing clause merely authorizes entry and examination. It does not authorize even the copying of documents.

Fifth Suggestion (Clause 22)

Clause 22 of the Bill is the same as that which was rejected by the Senate in 1935 and again in 1936.

The Clause as proposed in the Bill is in conflict with all English and Canadian legislation relating to evidence. It is also in conflict with the common law of England. I have a brief which contains the text of such legislation and common law. No such provision as that proposed by Clause 22 has ever been enacted in Canada or in England.

The issue between the Senate and the Commons has been as hereunder stated—

1. The House of Commons has enacted that when a witness at an investigation claims his common law privilege of (*a*) refusing to answer a question or (*b*) refusing to produce a document, which may criminate him that he should nevertheless be compelled by statute to answer the question and to produce the document. The Senate has agreed.

2. The House of Commons has enacted that the witness so compelled by statute to answer and or produce documents should have with relation to his answers, so compelled, the same protection from their use against him on a criminal prosecution as he would have had, if compelled to answer at common law. The Senate has agreed.

3. The House of Commons, however, has enacted that the witness (who, but for statute to the contrary, would have, with relation to his documents produced under compulsion, the like protection, if claimed, from their use

against him on a subsequent criminal prosecution) on such subsequent prosecution should not be protected against his written documents produced. The Senate has disagreed with this, deeming that every reason in support of protection of the witness against his sworn oral evidence given is, at least, as cogent a reason for protection of him against his unsworn documentary evidence produced.

It has been stated in the House of Commons on a number of occasions, and again during this present session, that all that is desired is to secure that the same conditions shall exist under the Combines Investigation Act as exist under the Inquiries Act by virtue of the provisions of the Canada Evidence Act.

This purpose would be very simply achieved by the entire omission of section 22 from the Bill. Then the Canada Evidence Act would apply, as it does to all Canadian legislation unless the latter is taken out of the operation of the Evidence Act.

But the Canada Evidence Act applies only to answers to questions. It does not purport to compel production of documents. It leaves production of documents, along with and as part of the vast body of law known as "the law of evidence," except to the extent of its impairment by the Act, to the operation of the common law. (See section 35 of that Act.) At common law production of a document which tends to criminate a witness cannot be enforced at all.

I think that if the existing section of the Act (sec. 24) is amended at all that the amendment should take the following shape:—

1. Wholly repeal section 24 of the present Act. This will bring into effect section 5 of the Canada Evidence Act (see sec. 2 of that Act) which applies to answers to questions.

2. Enact in place of the repealed section the following, which for over thirty years has been in the Railway Act as section 65. That Act adopts the now recommended device, viz it suffers the Canada Evidence Act to apply as to questions and answers and provides of itself concerning the production of documents.

Now proposed new Clause 22 of the Bill.

"22. No person shall be excused from attending and producing books, papers, contracts, agreements and documents, in obedience to the subpoena or order of the Commissioner or of any person authorized to hold any investigation under this Act, or in any cause or proceeding based upon or arising out of any alleged violation of this Act, on the ground that the documentary evidence required of him may tend to criminate or subject him to any proceeding or penalty; but no such book, paper, contract, agreement or document so produced shall be used or receivable against such person in any criminal proceeding thereafter instituted against him, or other than a prosecution for perjury in giving evidence upon such investigation, cause or proceeding."

Sixth Suggestion (Clause 26).

I suggest consideration as to whether the proposed new clause 26, which alters the existing law, sufficiently cares for the interests or necessities of owners of, say, books of account, records and shares of companies, &c. Also should there not be some provision as to ultimate actual return of records and documents to their owners?

Seventh Suggestion (Clause 35 (2)) Page 14, line 1.

If suggestion No. 3, which relates to clause 17, is adopted then subsection (2) of section 35 should be amended to conform, as follows:—

Strike out of line 1 the words "officer or servant" and substitute "the proper officer".

Eighth Suggestion.

Part of subsection 4 of section 2 of the existing Act is omitted from Bill 41. The subsection is one dealing with monopolies. The omitted part reads as follows:—

"This subsection shall not be construed or applied so as to limit or impair any right or interest derived under the Patent Act, 1935, or under any other statute of Canada."

As the essence of a patent is monopoly and as Dominion statutes have and may again constitute a monopoly for a public purpose I suggest that the necessity of restoration of the omitted words be considered.

Ninth Suggestion.

Section 28 of the Combines Investigation Act Amendment Act, 1935, is also omitted from Bill 41. It is that section, added in 1935, which prevents multiple convictions of an accused person on the same set of facts.

As the Senate has in the case of all other Bills coming before it, within my experience, provided so that multiple conviction should not be possible, I direct attention to this omission and to the fact that it will imply Parliamentary approval of a former practice, under the Combines Act, of asking and getting double convictions on the same facts.

Hon. Mr. SINCLAIR: This criticism of the Bill was not asked for.

The CHAIRMAN: You are wrong, senator.

Hon. Mr. COTÉ: I understand it is the duty of Parliamentary Counsel to report on Bills. Mr. O'Connor, as Parliamentary Counsel, is in duty bound when he discovers in a Bill what, in his opinion, is a flaw or a constitutional weakness or a defect to so report to this House.

Hon. Mr. SINCLAIR: To the House, not to the committee.

Hon. Mr. COTÉ: To the committee.

Hon. Mr. SINCLAIR: He cannot report to the two.

Hon. Mr. COTÉ: Of course he cannot report to the House; he reports to the committee.

The CHAIRMAN: I want to say to the senator from Prince Edward Island that practically every Bill which has been before this committee this session—

Hon. Mr. SINCLAIR: Is referred to us by the Senate.

The CHAIRMAN: —has been reported on—and I have read almost every report—by the Law Clerk, Mr. O'Connor. When I was first chairman of the committee the same procedure was followed by Mr. Creighton. It is the duty of the Law Clerk to advise us of the nature of legislation.

Hon. Mr. SINCLAIR: Am I to understand the Law Clerk is a free agent?

Hon. Mr. CASGRAIN: I will tell you if you will only listen.

Hon. Mr. SINCLAIR: I have the floor.

Hon. Mr. CASGRAIN: Then stand up and say what you want to say.

The CHAIRMAN: It is an authority that has been exercised ever since I have been in the Senate.

Hon. Mr. CASGRAIN: I was Chairman of the Railway Committee for four years, and that was the procedure followed by the then Law Clerk, the late Mr. Creighton. The Law Clerk is hired and paid to say what he thinks about the Bills that come before us. Any senator can go to him and ask for the law. I used to go to Mr. Creighton all the time. Great legal minds—I could give the names of those lawyers; there were no better in Canada—always referred Bills in which they were interested to Mr. Creighton for his opinion. He had been Law Clerk for many years and was well versed in the parliamentary rules and constitutional law. I repeat, any member of the Senate can go to the Law Clerk for his opinion on legislation. If the Law Clerk would not give his opinion, then we should have to get another gentleman in his place. That is all.

The CHAIRMAN: This opinion seems to be regarded as an attack on the Bill. It is not. It is simply an opinion on the question of constitutionality.

Hon. Mr. SINCLAIR: I am not questioning the submission, I want to know the position.

Hon. Mr. LYNCH-STAUNTON: Should we be left in ignorance?

Hon. Mr. SINCLAIR: No.

Hon. Mr. DANDURAND: I think we should ask the Minister upon what he bases the Bill.

The CHAIRMAN: Is the senator satisfied, or does he want to be referred to the rule?

Hon. Mr. SINCLAIR: That is what I want to get at.

Hon. Mr. MORAUD: Mr. O'Connor refers to the P.A.T.A. case. I understand there is a distinction between that case and the present case. There the Privy Council found there was no infringement of the administration of justice in the provinces. In this case you claim there is?

The LAW CLERK: No.

Hon. Mr. MORAUD: What is it?

The LAW CLERK: Previous to the P.A.T.A. case it was doubtful whether the Dominion could by enactment create a new crime, something that was not criminal in its nature. Whether, for instance, the Dominion could say that taking a drink from the town pump constituted a crime. The P.A.T.A. case decides that that is wrong. The objection to the old Combines Act of 1922 was that it attempted to make a crime out of something that had not been previously a crime—out of a contract between two parties. The Judicial Committee held that that could be done. That is the P.A.T.A. case.

The Judicial Committee of the Privy Council, however, in deciding that case had, as always, to review the Act. The question was whether the Act was constitutional. They reviewed the Act to see whether it invaded the provincial power of administration of justice. They said no, it does not invade that provincial power, for the reason that it only provides for administrative acts performable by Government servants in the nature of acts such as are performed by excise and customs officers respectively under the Excise and Customs Acts; that is, normal administrative acts of Government departments. That is the whole P.A.T.A. case.

I draw a distinction in this case. For example, I take one section. This section for the first time enables an officer, without warrant, without resort to a court, without oath, without any single one of all the safeguards that have been built up for the protection of persons and property in the history of English law, to walk into anybody's premises, whether he is a combinester or not, whether or not he is a witness, or proposes to be a witness, whether or not it involves commodities, and that officer can take not merely papers but anything he likes that he finds in that house and carry them away. I say that is not the P.A.T.A. case.

The CHAIRMAN: The Minister would like to make some comment on that.

Hon. Mr. ROGERS: What I am about to say is subject to the more considered study that will be given to the memorandum submitted by Mr. O'Connor. I have only had an opportunity to see it this morning. That is true also, I understand, of all members of the committee. I think I owe it to the committee nevertheless to point out that in conformity with established practice this Combines Bill was submitted to and has been approved by the law officers of the Crown.

Mr. O'Connor has expressed an opinion as to the constitutionality of the Bill. Upon that point I do not feel I am competent to give an opinion at the present time. It would be merely an opinion and nothing more. And it is not the duty of the Minister of Labour to give opinions upon constitutional questions; that function belongs rather to the Minister of Justice.

I think I ought perhaps to place on the record the opinion of the Privy Council in the case referred to by Mr. O'Connor. That is, the P.A.T.A. case, the case involving the Proprietary Articles Trade Association. It was that case which determined the constitutional validity of the Act of 1923.

Hon. Mr. Coté: What is the reference to that case?

Hon. Mr. Rogers: It is 1931 Appeal Cases. I quote from the judgment:—

> In their Lordships' opinion Section 498 of the Criminal Code and the greater part of the provisions of the Combines Investigation Act fall within the power of the Dominion Parliament to legislate as to matters falling within the class of subjects, "the Criminal Law including the Procedure in Criminal Matters" (Section 91, 27). The substance of the Act is by Section 2 to define, and by Section 32 to make criminal, combines which the legislature in the public interest intends to prohibit. The definition is wide, and may cover activities which have not hereto been considered to be criminal. But only those combines are affected "which have operated or are likely to operate to the detriment or against the interest of the public, whether consumers, producers, or others"; and if Parliament genuinely determines that commercial activities which can be so described are to be suppressed in the public interest, their Lordships see no reason why Parliament should not make them crimes. "Criminal law" means "the criminal law in its widest sense" (Attorney General for Ontario v. Hamilton Street Railway (1903), A.C. 524). It certainly is not confined to what was criminal by the law of England or of any province in 1867. The power must extend to legislation to make new crimes. Criminal law connotes only the quality of such acts or omissions as are prohibited under appropriate penal provisions by authority of the State.

Hon. Mr. Moraud: That is all right for determining the crime. What about the procedure?

Hon. Mr. Rogers: I am coming to that. As I understand Mr. O'Connor's opinion, he lays it down that the present Act is unconstitutional. Surely in view of the opinion of the Privy Council the unconstitutionality which he alleges could not relate to the definition of the crime. It must be confined solely to what might be termed a matter of procedure. In other words, the manner in which the Commissioner, as set up under this Act, conducts his investigation. I might say that that particular phase of the question did receive very considerable attention in the House of Commons when the Bill was before it in committee, and I believe some of the amendments made at that time—of which Mr. O'Connor seems to be unaware; at least I gather so from one of references —improve the position and to that extent remove some of the objections which appear in this brief. I am far from suggesting that some further improvements may not be possible, but I think the committee ought to understand that when Mr. O'Connor states this Bill is unconstitutional, he cannot mean, and obviously does not mean, that substantively a Bill which relates to crime is not constitutional. That point was settled by the Judicial Committee of the Privy Council. I quote again from the judgment:—

> —if the main object be intra vires the enforcement of orders genuinely authorized and genuinely made to secure that object are not open to attack.

That further quotation from the judgment may have some bearing upon certain further references made by Mr. O'Connor in his memorandum.

It is alleged by Mr. O'Connor that the proposed legislation is a very serious violation of the liberty of the subject. I would agree with Mr. O'Connor that this is unique legislation. It is unique legislation because it is designed to deal with what might be termed almost a unique situation.

Hon. Mr. LYNCH-STAUNTON: You say it is unique legislation?

Hon. Mr. ROGERS: That is what Mr. O'Connor says.

Hon. Mr. LYNCH-STAUNTON: Do you say that yourself?

Hon. Mr. ROGERS: I say that if it is unique legislation—

Hon. Mr. LYNCH-STAUNTON: I thought you said it was.

Hon. Mr. ROGERS: If it is, it is such because it is designed to deal with an exceptional situation.

Right Hon. Mr. MEIGHEN: Why exceptional? Have they not the same problem in England, for example?

Hon. Mr. LYNCH-STAUNTON: Unique legislation is unprecedented, is it not?

Hon. Mr. ROGERS: I should not say it is unprecedented. I should prefer rather to qualify that word. It is exceptional legislation, designed to deal with an exceptional situation. However, in respect of some of the procedural matters mentioned by Mr. O'Connor in his memorandum, it does not differ materially from other legislation which is designed to protect consumers. It has been found necessary, in order to give sufficient protection to consumers, to provide officers of the Government with powers which they did not possess hitherto. I am not going into the detail of this now. Perhaps it would be better to deal with that phase of it at a later time. Some reference was made in the other House to procedure under the Precious Metals Marking Act and the Pure Foods and Drug Act, which does give an officer of the Government rather extraordinary powers, in order to secure evidence upon which subsequent criminal proceedings may be based.

Hon. Mr. LYNCH-STAUNTON: Does this go further than that legislation?

Hon. Mr. ROGERS: Yes, somewhat further. But I was speaking on the point that you find in this legislation an invasion of civil liberty. I do not think it would be unfair to say that a great deal of our law can be described in just those terms.

Right Hon. Mr. MEIGHEN: Far too much of it.

Hon. Mr. ROGERS: The whole purpose of law, I take it, is to restrict the liberty of the few for the benefit of the many, if the liberty of the many may be abused to the detriment of the community at large.

Hon. Mr. COTÉ: It is the liberty of all for the benefit of all.

Hon. Mr. ROGERS: There may come a time, I submit, when liberty is converted into licence—

Hon. Mr. LYNCH-STAUNTON: Then it is not liberty.

Hon. Mr. ROGERS: —and when the interest of the community requires that there shall be some restriction. There is not, to my knowledge, any such thing as absolute liberty. As we all know, when Peel's factory Acts were brought down in England, they were objected to by the employers of that day on precisely that ground, that they operated as an invasion of liberty.

Hon. Mr. LYNCH-STAUNTON: What troubles me about this procedure is that it is an irritating practice, not restrictive legislation at all. It is not penal legislation; it is legislation giving certain people power to invade a man's castle, which should never be done. It is the practice that is obnoxious.

Hon. Mr. ROGERS: Mr. Chairman, certainly I cannot complain about that objection. It is a fair objection, which I can understand being made. Our position is this, that public policy requires that there shall be an effective investigation of the operations of the various types of business organization set out in the definitions clause of this Bill. Pursuant to that effective investigation, we believe it is necessary that the Commissioner shall have what may be described as extraordinary powers, in order to secure evidence upon which subsequent criminal proceedings may be based.

Hon. Mr. LYNCH-STAUNTON: Has any legislature in the British Empire ever given such powers as you ask here?

Hon. Mr. ROGERS: I should say that the Parliament of Canada in earlier legislation has given powers which, while perhaps not quite as wide as these—

Right Hon. Mr. MEIGHEN: No, nothing like as wide.

Hon. Mr. LYNCH-STAUNTON: Are there any such powers in England?

Hon. Mr. ROGERS: I am not able to answer that question.

Right Hon. Mr. MEIGHEN: It is important, because their problem must be much bigger than ours.

Hon. Mr. ROGERS: I think we proceeded with combines legislation before they proceeded in that direction in England. In the United States, of course, the Sherman Act and the Clayton Act followed ours by a few years.

Right Hon. Mr. MEIGHEN: Those Acts do not do what you seek to do here.

Hon. Mr. ROGERS: Perhaps on this particular question of procedure and the powers of the Commisisoner in carrying out investigations, we should make better progress if we dealt with these questions when the clauses are before the Committee. I thought that I might deal with this more general question, having read Mr. O'Connor's memorandum.

The CHAIRMAN: Shall we proceed with the Bill clause by clause?

Right Hon. Mr. GRAHAM: What are we members who do not know anything about law to do as regards this constitutional question?

Hon. Mr. DANDURAND: I would answer that question in this way. It has been my experience in this Committee and others that when a similar problem was before us we have been guided by the opinion of the law officers of the Crown, who say that we have jurisdiction.

Hon. Mr. LAIRD: Rightly or wrongly?

Hon. Mr. DANDURAND: Well, it is not for us to refuse to pass legislation just because we may have a doubt as to our powers, when the law officers of the Crown declare to us that we are within the four corners of our Constitution. The practice has been in such cases that we accept the opinion of the law officers.

Hon. Mr. COTÉ: I recollect, though, that when some constitutional questions arose in the Senate the present leader of the Government moved and forcibly presented a motion to have the questions referred to the Supreme Court of Canada for opinion as to whether the proposed legislation was within our powers. We voted against his motion, and since then we have seen that a great deal of the legislation which we passed at that time has been declared by the Privy Council to be ultra vires. Fortunately most of those Acts had not been put into effect.

Hon. Mr. LYNCH-STAUNTON: Some were.

Hon. Mr. COTÉ: What a great deal of expense and inconvenience would have been entailed if all those laws had been put into effective operation. Now, in the present case there is some doubt as to our powers. Are we going to put this measure on the Statute Book and invoke against citizens a law which later may be declared ultra vires? I wonder if the leader of the Government has contemplated making a proposal to have this question referred to the Supreme Court.

Hon. Mr. DANDURAND: I confess that I read with some degree of pride the judgments of the Privy Council on the legislation referred to by my honourable friend, because it seemed to me I could find in those judgments some of the very affirmations I made, and in exactly the same terms as I made them, as to the validity of the legislation. However, we have already had a judgment of the Privy Council as to the validity of the Combines Act.

Hon. Mr. MORAUD: Not this one.

Hon. Mr. DANDURAND: No, but the Combines Act of 1923. Now we are dealing with the authority of Parliament to organize a system of investigation leading to action which has been declared to be within our jurisdiction. As there have been considerable amendments made in the House of Commons to many of these clauses, I think we can at all events go through the Bill and meet the difficulty whenever it appears.

Hon. Mr. LYNCH-STAUNTON: Mr. Chairman, I agree with the suggestion made by Senator Coté. When Mr. Dandurand raised the question on the old Bill I thought he was right, and voted with him, and I think the argument is just as cogent to-day as it was then. When it comes to making such drastic invasions of personal rights—I do not know whether that is the right term, because we may not have any rights at all; but what we have always thought were our rights and privileges and exemptions—I think that before we put ourselves in the position of allowing the law officers to invade what we have always thought were our rights we should be sure, and should have a decision of the Privy Council.

Hon. Mr. DANDURAND: I would ask my honourable friends this. Should we not first find out what are the rights that we claim, or that the Government claim, or the Minister of Labour claim under this Act?

Hon. Mr. LYNCH-STAUNTON: I intended to say also that we should have the opinion of the law officers of the Crown who are responsible, and should not go forward with this Bill when our own Law Officer condemns it. The law officers of the Crown should give their deliberate and fair opinion uninfluenced by the Government or anyone else.

I do not express my guess on it at all, but I regard it as a very, very serious Bill. To my mind it is unprecedented in British legislation, and I think we should have all the rights on it we can get before we put it through.

Hon. Mr. DANDURAND: I do not know whether the Minister has in his record the opinion of the law officers of the Crown. If he has not, I will ask that they give us their opinion, which will be practically an opinion on the opinion of our own solicitor, because they will have it. If they have not yet given their opinion they can give it by to-morrow, and they will have before them the opinion of Mr. O'Connor.

Hon. Mr. MORAUD: They must have given their opinion.

Hon. Mr. ROGERS: Not on the particular point raised by Mr. O'Connor.

Hon. Mr. MORAUD: On the whole Bill.

Hon. Mr. ROGERS: The Bill as introduced was approved by the Department of Justice.

Hon. Mr. MORAUD: Could we not get that opinion now? It must be in writing.

Right Hon. Mr. MEIGHEN: I do not suppose they have expressed any opinion. I do not suppose they have given a written opinion.

Hon. Mr. ROGERS: I think that is right.

Right Hon. Mr. MEIGHEN: I do not rise to discuss the Insurance Act or the Hours of Labour Act and all that they involve. I am quite ready to accord to the leader of the Government the satisfaction he must feel in having his opinions supported by the Privy Council judgment. I did not receive it with the same satisfaction. I had no right to. I received it with utter despair. I think we are now tied in a knot which is disastrous—it is a catastrophe.

Now we are faced with the task of addressing ourselves to a constitutional question. The same law officers that the Minister wants to appeal to now are the law officers who supported the previous legislation, and who were found to be wrong. In my judgment they were not wrong, but we have to accept the

judgment which said they were. The fact that they gave that opinion and came to our Committee and supported it did not affect the stand of my honourable friend.

Hon. Mr. DANDURAND: It was based on the two judgments of the Privy Council which I discussed.

Right Hon. Mr. MEIGHEN: He did not accept it. He had his vindication. He said, "Do not go ahead with this until we get a judgment of the Privy Council, for if we do it will mean the establishment of an expensive organization and a great loss of money."

Hon. Mr. DANDURAND: Millions of dollars.

Right Hon. Mr. MEIGHEN: What is going to be the result if this Bill is wrong? This Bill repeals the old Act. If it passes this House the old Act is gone, and all the protection that the Minister says is so essential goes by the board. Further, this Bill takes certain sections of the Trade and Industry Act and puts them in here. It takes away the jurisdiction of the administrator of that Act, who has been a judge of one of our supreme courts, and places it in the hands of an officer of the Labour Department. If this Bill passes, and is found to be unconstitutional, that officer—who I am given to understand very directly is well pleased with what he is able to accomplish under the Trade and Industry Act—will be stripped of his power, and we will be left bare and exposed to all these sinister attacks on the rights of the consumer.

I am not complaining of the representation the Minister made; but the very reasoning of the leader of the Government in the other case applies with double force here: If this is not good, we have nothing at all. Even if we have to wait for the Privy Council judgment, would it not be better to submit this first? We have at least the Trade and Industry Act.

Right Hon. Mr. GRAHAM: Would you submit it to the Supreme Court?

Right Hon. Mr. MEIGHEN: I think we would have to. Why is it so vital? One would think we had nothing. We have had the Combines Investigation Act, since, I think, 1908.

Hon. Mr. ROGERS: 1910.

Right Hon. Mr. MEIGHEN: We have been amending it time and again. We virtually re-wrote it in 1923. In addition, we have the Trade and Industry Act. I venture to say we have more now, certainly, than Britain has, because I have read one article at least on the British method; and I think we have more than any other country. We are not in any great peril. If there is a cry for further inquisitions and third degrees, I have never heard it, it has been nothing but political propaganda by those who desire to aggrandize themselves by creating class feeling. That is one of the curses of the country.

Hon. Mr. LYNCH-STAUNTON: It ruined the Conservative party.

Right Hon. Mr. MEIGHEN: We are well protected now. If we cannot give to men accused of forming a combine the same protection the law gives in the Criminal Code to a man accused of crime, I would vastly sooner surrender to them the tremendous instrument they have to-day than dream of passing this legislation.

I regard the constitutional feature as very important for the reasons I have advanced, but it is not the main feature. The main feature is that the progress of this class of legislation just makes life not worth while at all. There are parts of this country to-day that are not fit to live in. This legislation is putting into the hands of government officers powers which by the very text of the constitution should rest in the courts of law. We are waving the courts off the scene, and are telling them, "No, you are not to decide on the rights of our citizens; we are going to appoint an officer to do that." We are doing it here, there and everywhere—I am not referring to the federal field—and we are doing

it quite unconstitutionally. Has the Minister any appreciation of where we are going to land? We are going to land in such a position that the failure of democracy will be so catastrophic that it will resound throughout the world.

Hon. Mr. DANDURAND: Would you allow the Minister, whose child is before us, to defend or justify it?

The CHAIRMAN: Certainly.

Hon. Mr. ROGERS: I have no desire to take up the time of the Committee, and I am a little doubtful as to whether I should speak except at the request of the Committee.

I think we must all be impressed with some of the dangers referred to by Mr. Meighen. I can only say that in the consideration of this legislation before the House of Commons he will find nothing in what was said by me, as Minister of Labour, or by others supporting it which was either designed or calculated to produce class antagonism.

Right Hon. Mr. MEIGHEN: I did not suggest that, but what the Minister asks to-day is that we should yield to this kind of thing, and not stand up boldly, the way they have in Britain and everywhere else, to resist it.

Hon. Mr. ROGERS: There I am bound to express a difference of opinion. That is to say, I believe that if in these days there are such undercurrents of opinion as are working to-day, it is a duty resting upon governments to see to it that every proper precaution is taken to prevent the possibility of abuse by those who hold special privileges or exercise extraordinary powers.

Right Hon. Mr. MEIGHEN: What is the special privilege of doing business?

Hon. Mr. ROGERS: There is nothing in this Bill which condemns any type of business structure as such. All it does is to define certain types of business structures—most of them of comparatively recent development; most of them having large scale operations—and to say that if those particular types of organization operate in such a way as to be contrary to public interest they shall come under the fines and penalties.

Hon. Mr. LYNCH-STAUNTON: Have you left anybody out of this?

Right Hon. Mr. MEIGHEN: Yes, the labour unions are out.

Hon. Mr. LYNCH-STAUNTON: Have you left out the labour unions? I think this definition includes labour unions.

Hon. Mr. ROGERS: There is a specific clause.

An Hon. SENATOR: They have more votes than the rest of the public.

Hon. Mr. ROGERS: I think I ought, perhaps, to say that in the actual administration of the Combines Act in previous years there has been nothing to suggest inquisition by design.

Right Hon. Mr. MEIGHEN: I think there is, and not under your Government at all.

Hon. Mr. ROGERS: I know that many of the investigations have proved the existence of conditions which I am sure no member of this Committee would believe ought to exist. In fact, if they did exist, I think you would tend rather to give greater strength to the—

Hon. Mr. LYNCH-STAUNTON: Has anything been done since as a result of the Customs Investigation or the Price Spread Inquiry?

Hon. Mr. BALLANTYNE: Yes. The Conservatives lost the election.

Some Hon. SENATORS: Oh, oh.

The CHAIRMAN: Shall we take up the Bill section by section?

Some Hon. SENATORS: Yes.

On section 2—definitions. "Combines."

The CHAIRMAN: I will read section 2, subsection 1.

Hon. Mr. Ballantyne: Will the Minister explain what is meant by the definitions?

The Chairman: Who is to decide whether or not any of these actions are likely to operate to the detriment or against the interests of the public, whether consumers, producers or others?

Hon. Mr. Rogers: That, in the final analysis, is really determined by the courts. What is set out here is a list of actions which do create the presumption that the particular type of business organization has been operating to the public detriment. But unless it is decided by the courts that the operation has been to the detriment of the public no action would lie.

Hon. Mr. Moraud: Before the Commissioner can give his report there is an investigation, which amounts to a trial.

Hon. Mr. Rogers: I submit it is not a trial in the legal sense, because it does not eventuate either in a fine or other penalty.

Hon. Mr. Coté: Perhaps the Minister would say it is not a trial but an inquisition?

Hon. Mr. Rogers: I should not care to agree with that statement.

Hon. Mr. Beaubien: Your officer could go into any business and create a great deal of trouble.

Hon. Mr. Rogers: No investigation can take place under the provisions of the Bill except at the instance of the Minister or upon the application of six persons, residents of Canada, who have taken an oath that to their knowledge and belief a combine does exist. That is to say, the Commissioner of his own volition cannot conduct an investigation under the Act.

Right Hon. Mr. Meighen: Suppose there is a grist mill supplying flour for a certain district. Somebody gets mad and induces five other men to join him in making an application under the Act. Then the owner of the grist mill is going to be put to thousands of dollars of expense.

Hon. Mr. Rogers: There is provision for a preliminary inquiry.

Right Hon. Mr. Meighen: That will cost a lot of money.

Hon. Mr. Rogers: The preliminary inquiry is provided rather to prevent what you might term frivolous or vexatious complaints of the kind which Senator Meighen has referred to. Actually in the administration of the Act these preliminary inquiries have resulted in reports by the registrar or the commissioner which suggested there was not any basis for going further. So in a preliminary inquiry no one against whom a complaint is made is put to expense.

Hon. Mr. Lynch-Staunton: I consider this section dealing with definitions is the most important part of the Bill. Is this the same as the old definition or is it new?

Right Hon. Mr. Meighen: Oh, yes.

Hon. Mr. Rogers: It is substantially the same as the definition in the 1935 Act. The only difference is as regards merger, trust or monopoly under subsection 1 of section 2. Under the present wording of subsection 1 merger, trust or monopoly can be held to apply to a service instead of to an article or commodity. That is the only material distinction as between the definition in this Bill and the definition in the Act of 1935.

Right Hon. Mr. Meighen: Why should it apply to a service?

Hon. Mr. Rogers: It is only designed to provide possible protection against the operation of a monopoly which might control a very essential service over the entire country. I would not say it was vital, but at the same time we felt it desirable that it should be included.

Hon. Mr. Moraud: What is the definition of a trust?

Hon. Mr. Rogers: It is defined in subsection 7, just across the page.

Hon. Mr. BALLANTYNE: Would it not work out something like this, Mr. Minister? A large corporation—call it a trust, if you like; there are many of them in Canada very beneficial to the consumer who buys and uses their products—has among its staff six disgruntled men. They can make application to the Commission. Then the organization finds itself in the hands of one commissioner. He may decide that the business is detrimental to the interests of the consumer or buyer of its particular articles. The commissioner will be able to enter the company's premises, take whatever documents he likes, summon officials and cause a general upheaval, and yet there may not be anything very substantial in the original charge. I object to all the business interests of this country being placed in the hands and judgment of one man, the commissioner, as to whether the complaint lodged by six persons shall be proceeded with. Those six men may be of no substance at all, they may be discharged employees and may feel aggrieved. This would not only very seriously disturb business but involve business men in great expense.

Hon. Mr. LYNCH-STAUNTON: These are the concluding words of subsection 1:—

> And which combination, merger, trust or monopoly has operated or is likely to operate to the detriment or against the interests of the public, whether consumers, producers or others.

If I establish a business in a town it certainly will operate contrary to the interests of all those there who are engaged in the same line of business. It does seem to me we ought very seriously to consider this definition.

Hon. Mr. DANDURAND: That is the old definition.

Hon. Mr. LYNCH-STAUNTON: That may be, but we are now starting with a new Bill, and we may have learned more than we knew when the Act was first put into force. I do not think this language will cover the case where one man is in business and another man sets up a competitive business. That innocent competitor might be proceeded against under this Bill.

Hon. Mr. DANDURAND: This is intended to maintain competition, not to destroy it.

Hon. Mr. LYNCH-STAUNTON: I do not want to take factitious opposition to the Bill, but I wish to be satisfied that where a man engages in a legitimate business in competition with another man already established, and whose business will certainly be hurt, this proposed legislation could not be invoked against him.

Hon. Mr. DANDURAND: It would not apply.

Hon. Mr. LYNCH-STAUNTON: Does this definition cover the case I have mentioned?

Hon. Mr. ROGERS: I would say it does not.

Hon. Mr. LITTLE: The subsection does not read exactly as the senator has stated.

Hon. Mr. LYNCH-STAUNTON: The subsection contains the words "or is likely to operate to the detriment or against the interests of." Certainly an opposition business would operate to the detriment of an existing business.

Hon. Mr. ROGERS: To the detriment or against the interests of the public.

Hon. Mr. LYNCH-STAUNTON: It does not say so.

Hon. Mr. ROGERS: It says "to the detriment or against the interests of the public."

Hon. Mr. LYNCH-STAUNTON: This seems to me to be a sort of dragnet section. Does this definition cover that case?

Hon. Mr. ROGERS: I should say no, Senator Lynch-Staunton.

Hon. Mr. LYNCH-STAUNTON: I should like you to explain to me why it does not. If I am satisfied as to that, I will not object.

Hon. Mr. LITTLE: Mr. Chairman, the clause does not read exactly as Senator Lynch-Staunton suggests.

Hon. Mr. LYNCH-STAUNTON: It says, "is likely to operate to the detriment" of an existing business.

Hon. Mr. ROGERS: "—of the public."

Hon. Mr. LYNCH-STAUNTON: Of the public or of anybody.

Hon. Mr. ROGERS: Oh, no.

Hon. Mr. LYNCH-STAUNTON: The words "or others" are at the end of the clause. This seems to me to be a dragnet section. "Interest of the public" is a very vague thing. I thought I had a rudimentary idea of the meaning of the English language. When you put in the words "or others," does that not include any opposition that may be made to any business?

Hon. Mr. ROGERS: Mr. Chairman, my understanding would be that the case described by Senator Lynch-Staunton would not fall within the prohibitions of the measure. The whole purpose of the Act is to maintain competition, not to detroy it. It does not apply to a single unit of business, except such as comes under the definition of trust, merger or monopoly. Apart from that, it is necessary to establish a combine; there must be an agreement as among several different units of business.

Right Hon. Mr. MEIGHEN: A monopoly may be a single person.

Hon. Mr. ROGERS: Yes.

Hon. Mr. LYNCH-STAUNTON: But is not a "combine" defined by this section to be any business—

Hon. Mr. ROGERS: It means "a combination of two or more persons," and so on, as defined in subsection 1.

Hon. Mr. LYNCH-STAUNTON: Subsection 1 says:—

> "combine" means a combination of two or more persons by way of actual or tacit contract, agreement or arrangement having relation to any article or commodity which may be a subject of trade or commerce. . .

This is disjunctive, not conjunctive, because of the use of the word "or." And it goes on:—

> . . . or a merger, trust or monopoly, and which has or is designed to have the effect of

And so on. This language, it seems to me, makes the definition illimitable. It ignores a man's intention. A business man may have done something which he considered perfectly honourable and just, but if it has a certain effect he is liable. No law that I ever heard of made a person liable to punishment unless he had certain intent. I am making an objection which is not technical at all. Under this section, if I had not the slightest intent of wronging my neighbour or of doing anything illegitimate, I should be liable if my action had the effect of doing the things specified here.

Hon. Mr. BALLANTYNE: May I cite a concrete, bona fide case to the Minister? I am familiar with this case. Two large manufacturers are engaged in producing an article that is universally used from one end of the country to the other. They had a friendly understanding as to price, but one of them, for reasons of his own, broke away. To-day the article is being manufactured and sold at a disastrous loss to both manufacturers.

Hon. Mr. DANDURAND: By themselves?

Hon. Mr. BALLANTYNE: Yes. The friendly understanding which they had regarding price, I presume, would be a crime under this section.

Hon. Mr. ROGERS: Not necessarily.

Hon. Mr. BALLANTYNE: If it could be proven to be against public interest. Now, both manufacturing concerns are losing heavily to-day.

Hon. Mr. DANDURAND: Because of a reduction in price?

Hon. Mr. BALLANTYNE: Yes. Now, suppose one of or both those manufacturers got tired of this fight and came to another friendly understanding, agreed upon what they considered a fair price. The price of the article would then necessarily be raised. Well, if six persons sent an application to Ottawa and applied for investigation, would the Minister or the Commissioner interpret the friendly agreement of these two companies as something detrimental to the interest of the public? The companies have been selling at a disastrous loss. What would the official view be if they decided to discontinue this fight and sell at a fair price?

Hon. Mr. ROGERS: I doubt if that is a question I ought to answer.

Right Hon. Mr. MEIGHEN: I do not see how you could help but hold that that would be against the interest of the consumer.

Hon. Mr. ROGERS: There again it is a question of whether or not it is "to the detriment or against the interest of the public, whether consumers, producers or others."

Hon. Mr. BALLANTYNE: If these companies stopped losing money the public would have to pay more. That would be detrimental to the interest of the public, would it not?

Hon. Mr. ROGERS: There have been a whole series of decisions by the courts in which that phrase "to the detriment of the public" has received judicial interpretation; and there has also been very careful consideration of that phrase "has operated or is likely to operate." It does not seem to me that I should express an opinion in advance as to whether or not there would be a combine in the actual case cited by Senator Ballantyne. That is not a function which the Minister is called upon to exercise; that is a function which can be exercised only after the most careful investigation.

Hon. Mr. BALLANTYNE: How would the Commissioner interpret that situation, if this Bill were passed?

Hon. Mr. ROGERS: I should think he would inquire very carefully into the facts that have been cited by Senator Ballantyne, including the operations by the two companies at a loss prior to the making of the agreement. Then he would have to consider the question as to whether the price appreciation which resulted from the understanding was such as to be detrimental to the public interest.

Hon. Mr. LYNCH-STAUNTON: Two provincial governments had to step in and stop what was being done in the pulp business. The governments insisted on those firms fixing a price which would be "detrimental to the public" under this Bill.

Hon. Mr. ROGERS: There has been no investigation under this Act of the newsprint industry.

Right Hon. Mr. MEIGHEN: I should think not. The industry was ruined, and Canada was pretty nearly ruined as well, just because there was no possibility of doing what this Act forbids. So the two provincial governments got together and arranged to have something done which would be illegal under this Act.

Hon. Mr. ROGERS: There is, of course, in the Dominion Trade and Industry Act a provision which might meet a situation of that kind. But I do not think that under the Combines Act any case arose or could arise in that particular industry.

Hon. Mr. DANDURAND: In that case the provincial governments of Ontario and Quebec felt that the raw material, the use of which they were permitting under licence, should not be sacrificed, that it was not in the interest of the public to sacrifice it.

Right Hon. Mr. MEIGHEN: Exactly.

Hon. Mr. MORAUD: They were party to a combine, too.

Hon. Mr. COTÉ: May I ask the Minister if he can refer me to decisions of the courts which interpret the words "is likely to operate?"

Hon. Mr. ROGERS: Perhaps Mr. McGregor could give you the references after we rise?

Hon. Mr. COTÉ: All right. Candidly, these words bother me. The six persons who may swear out an affidavit to the Commissioner asking for an investigation are not required to be persons of legal training. I am not familiar with the wording of the declaration that must be made, but I presume the effect of it will be that the applicants believe that a combine is operating or is likely to operate. In the first place they should have some knowledge as to the meaning of "combine" as defined in the Act. I can understand how a person who is familiar with that definition might be able to swear that he believes a combine is operating. But it is beyond me to understand how anyone can swear that a combine "is likely to operate to the detriment or against the interest of the public."

Right Hon. Mr. MEIGHEN: Some people would have no difficulty about that.

Hon. Mr. COTÉ: Well, they should.

Right Hon. Mr. MEIGHEN: Yes, they should.

Hon. Mr. COTÉ: Suppose in a certain district there are two grist mills and that they merge. I think the Minister has explained in the other House that such action in itself is not illegal.

Hon. Mr. ROGERS: No.

Hon. Mr. COTÉ: Well, let us suppose they merge to make economies in management and operation and so on. Then they start to operate. Now, once there is only one unit it is quite easy for the management to enhance the price of that unit's product. In such a case would there be grounds for saying that a combine is likely to operate to the detriment of the public? Is that the meaning, that if there is a possibility there is a likelihood?

Hon. Mr. ROGERS: I should think that a likelihood would rather indicate a reasonably probable consequence. I am thinking of the interpretation the courts have placed upon this point.

Hon. Mr. LYNCH-STAUNTON: You do not give that definition in the Bill.

Hon. Mr. COTÉ: Surely criminal proceedings should not be based on a possibility. Surely that cannot be right.

Hon. Mr. ROGERS: I do not think it would be, because "likely" involves probability, not possibility.

Hon. Mr. COTÉ: Why not make it clear on the Statute Book of the country what a crime is? I am not moving any amendment just now; we have not reached that stage; but I suggest to the Minister that he consider the clarification of these words so that by reading the statute which creates the crime we may know what the crime is. Other clauses of the Criminal Code are clear. Why should citizens who have businesses and who want to join for good and valid reasons be faced with the uncertainty of words like that in coming to a conclusion as to whether they are doing something illegal or not?

Hon. Mr. ROGERS: I may say in answer to that that section 498 of the Criminal Code refers to certain operations which unduly and unreasonably—

Hon. Mr. COTÉ: That is different.

Hon. Mr. ROGERS: Surely it touches the point. That is to say, one would not know in advance of the investigation whether the price enhancement had been undue or unreasonable.

Hon. Mr. Coté: If there is an uncertainty, why not clarify it? Personally I think that what the law probably should have in mind would be a conspiracy on the part of the combination; that they have done some overt act; that they are about to commit a crime. We can make a crime of that, but I say that the words "likely to operate" are very unsatisfactory and dangerous.

Hon. Mr. Moraud: I think Senator Coté is quite right. Those words "unduly" and "likely" have been before our courts time after time, and I do not see why we should not give a correct definition of those words. Here are two people who get together and reach an agreement which is perfectly legal. They do not enhance prices by that agreement, but the agreement may at some future time enable them to enhance prices, and what they have done becomes a crime, and a civil employee can investigate and report. If it was just a private investigation, as heretofore, it would not be as bad. But as the law is now, if these people make an agreement which in future would enable them to enhance prices, they become criminals. If they were tried before a court, legally, it would not be half as bad; but a commissioner, an officer of the department, is given the right to enter into their premises and seize anything he may find whether it is necessary for the inquiry or not. The inquiry is made public. There is an injustice done to these two people that nothing can repair, and in the end it may be found that there is nothing against them at all. It may be that the agreement would in future years have the consequence of enhancing prices, but prices have not been enhanced.

Hon. Mr. Lynch-Staunton: And they do not intend to enhance them.

Hon. Mr. Moraud: But it would "likely" have that effect—

Hon. Mr. Lynch-Staunton: Whether they want to or not.

Hon. Mr. Moraud: Exactly. Why should these people be treated as criminals, and why should they be tried before an officer of the department?

Hon. Mr. Dandurand: The word "tried" is not the one to use.

Mr. Moraud: I use it purposely. It is an investigation. Previously the investigation was a private investigation; even the report was not supposed to be made public. Now the investigation may be public. The officer of the department can go into the premises of these individuals, take anything he wants, publish anything he likes in the way of private documents, and when the damage is done there is no remedy just because these men have made an agreement that might affect the public in future years. That is why I am of the opinion of Senator Coté, that we should have not only in the Act but in the Criminal Code a definition of those words "likely" and "unduly."

The Chairman: I am informed that Mr. Macdonnell, representing the Canadian Manufacturers' Association, is here and would like to be heard.

Some Hon. Senators: Carried.

Mr. H. W. Macdonnell, Secretary, Law Department, Canadian Manufacturers' Association: Mr. Chairman and gentlemen, I shall be very brief, because the point I intended to speak upon has been pretty fully covered in the discussion which has taken place.

I would call attention to the words "or is likely to operate" and would respectfully submit that, at the very least, those words should be deleted. As Senator Lynch-Staunton said, this Act creates crimes without it being necessary for anyone to have a guilty intention. Obviously, as anyone knows, the ordinary idea and essence of a crime is that there must be a *mens rea*—a guilty intent. This measure says there shall be a crime without guilty intent. In other words, men shall be guilty of a crime if the effect is so and so.

But worse than that. So long as those words are retained a man is guilty of a crime even though the effect, which he never intended, never comes. He is a criminal if a judge and jury say that in their opinion the act he committed was likely to produce an effect.

Hon. Mr. LYNCH-STAUNTON: Fifty years from now.

Mr. MACDONNELL: That is the point.

I may say that language has been used in at least one case tried under the old Combines Act—which contained the same definition—which suggested that the judge's point of view was that all he had to do was to find that there was a combination as described in the early part of the section. He did not have to find that it had operated, but the minute he found there was a combination of people doing these things he said, "Everyone knows a combination of that kind is likely to operate in that way." He had the old idea that once a combination had been formed, *ipso facto* it had that effect. That being so, my submission is that the Committee should seriously consider whether these words "or is likely to operate" should not be deleted, so that when a person or a group of persons is accused of forming a combine it should at least be necessary to show that what they have done has had a certain effect; and it should not be left to a judge to say, "They got together to raise the re-sale price, and that is enough. We know what is likely from that."

Hon. Mr. CASGRAIN: If the effect is good, nobody is hurt.

Mr. MACDONNELL: I say that particularly in view of the fact that the penalties are so substantial. Section 32 says that anyone found guilty of forming a combine which some judge thinks is likely to operate in a certain way is liable to a fine of $25,000 or to imprisonment for two years, or both; or, if it is a corporation, it is liable to a penalty of $1,000,000.

Hon. Mr. BEAUBIEN: Does it mean that under this legislation there may be no criminal intent—no crime, but a criminal?

Mr. MACDONNELL: Yes, exactly.

The CHAIRMAN: Shall we go on?

Hon. Mr. MORAUD: Shall we suspend the clause in case someone wants to move an amendment?

The CHAIRMAN: We are still on clause 2.

Right Hon. Mr. MEIGHEN: Subsection 4 is entirely new, as I understand it.

Hon. Mr. ROGERS: It is changed. It is not entirely new.

Right Hon. Mr. MEIGHEN: A merger may consist of only one company.

Hon. Mr. ROGERS: That was in the 1935 Act. The merger results from; but in itself it may consist of one company.

Hon. Mr. BEAUBIEN: What is the meaning of "control over the demand"?

Hon. Mr. ROGERS: That would refer rather to the relationship between the combining units and the producers who might supply them that raw material. You did have, for example, a situation of that kind as between the tobacco companies and those who supplied them with leaf tobacco. It was alleged that the tobacco companies had a combine which enabled them to prevent the producers of tobacco in Western Ontario from obtaining a fair price for leaf tobacco.

Hon. Mr. BEAUBIEN: The buyers would agree not to buy a certain commodity?

Hon. Mr. LYNCH-STAUNTON: No, they agreed to pay only a certain price.

Hon. Mr. ROGERS: Yes. There was a complaint alleging a combine, but there was no finding that it was a combine.

Hon. Mr. LYNCH-STAUNTON: If a person makes up his mind that he cannot afford more than a certain price, and then he meets another buyer and tells him, "I have made up my mind that I cannot afford to pay more than a certain price," and then the other man agrees with him, would that be a conspiracy?

Hon. Mr. ROGERS: That, I take it, would be a matter to be determined following the legislation. For example, a complaint of that character was made

with respect to tobacco companies operating in Western Ontario. On investigation under the Combines Act it was found that a combine detrimental to the public interest did not exist, and the case went no further.

Hon. Mr. DANDURAND: The situation as disclosed by some evidence seemed to me to be very ugly. If you have two or three persons who represent 95 per cent of the purchasers of an article like tobacco, for instance, and they decide they will bring down the price so low that the producers will be simply working for them as slaves, getting no profit, that the purchasers may increase their dividends, I think that would well fall under the Act.

Hon. Mr. LYNCH-STAUNTON: That, Mr. Leader, would of course be a fine inflammatory address to make to a jury of farmers. But the point I make is that the buyers may know conditions are such that they cannot afford to pay more than, we will say, 6 cents a pound. One buyer persuades the others, and they all agree that they will not pay more than that figure. In short, one man knows his business better than his fellows and he says to them, "Boys, you cannot afford to give more than 6 cents a pound, and I will give you my reasons why." He satisfies them that they cannot afford to pay more. That is assumed to be an honest case. But under this Bill those fellows would be called before a jury and after such an address as you have just given they would go to Kingston sure.

Hon. Mr. DANDURAND: But the case does not reach the court until investigation has been made under the Act.

Hon. Mr. LYNCH-STAUNTON: But it does reach the court. Those men, acting fairly and honestly may carry out what they think is a fair and honest deal, but they cannot plead mens rea, as one honourable gentleman has just told us. Now, as a lawyer, I cannot conceive of anything more unjust than to eliminate intent from criminal practice. No jury would believe those men if they heard an address like the honourable leader of the Senate has just made to me. It is exactly the kind of address made by a prosecutor in every court in the world. You know what a terrible prejudice there is against business people, you know every producer is claiming he is not getting enough for his goods, that some middle man is robbing him. So the whole setting is against the unfortunate business man. I think it is a crime to eliminate intent from the criminal law.

The CHAIRMAN: Shall section 2 carry?

Some Hon. SENATORS: Stand.

The CHAIRMAN: All right. Section 2 stands.

We will sit again after the Senate rises this afternoon.

The Committee adjourned to sit again after the Senate rises this afternoon.

EVENING SITTING

The Standing Committee on Banking and Commerce, to whom was referred the Bill 41, an Act to amend and consolidate the Combines Investigation Act and amending Act, resumed this day at 8.30 p.m.

Hon. Mr. DANDURAND: Mr. Chairman, I think we are perhaps imagining that there are formidable difficulties in this Bill. I have the impression that if we would address ourselves to what is presently before us as proposed modifications to the Act—which is a law of our own making—we could perhaps go through the Bill more rapidly. I confess that I was somewhat of an optimist, for I was in hopes that we should prorogue this week, and that I should be able to shake off the dust of Ottawa and go back to my home in Montreal. But I understand that the House of Commons will await the findings of the Senate—

Right Hon. Mr. MEIGHEN: On this Bill?

Hon. Mr. DANDURAND: Yes, and that it will adjourn from day to day until we return this Bill to it. We have the whole of next week, so we are not being pressed. But I wonder if we could not examine the Bill between now and to-morrow night, giving it all our time, and see what progress we could make. We will sit Saturday and Monday and Tuesday, if necessary. I understand from Mr. Rogers, that the House of Commons disposed of this Bill in three sittings of Committee of the Whole. Perhaps fifty of that House's 245 members are interested in this work and were inclined to make speeches, but, as I say, they disposed of it in only three sittings. I wonder if we cannot go through all the modifications—for the Act is in existence and its principle is law. It may be said that the Act can be left as it is. Of course, if the Bill is not passed, the Act will remain as it is. But there is in the Bill a principle which the Government considers important, the transfer of the administration of this Act to the Department of Labour. And the Government believes that this measure is of sufficient importance for the House of Commons to await our good pleasure with respect to it.

Hon. Mr. COTÉ: Speaking as a private member, I think that is very accommodating of the House of Commons and I appreciate it a good deal. It should not deter us, however, from giving to this Bill the attention which we otherwise would. I appreciate their favour in not bringing on prorogation until we are through with this Bill. But if we are sitting here from hour to hour and day to day, we shall not have any opportunity of studying the Bill properly—looking up the law, for instance. This morning I asked Mr. McGregor to give me some authorities. No doubt he will. I should like to look them up: They bear on an important question which I raised this morning, one arising out of the very first part of the Bill, the definition of "combine," and particularly as to the meaning of "is likely to operate." In order to qualify myself to give an intelligent verdict on this clause, I should like not only to look up those authorities but to follow through the statutes and the history of the use of those words. I cannot do that while sitting on this Committee.

Hon. Mr. DANDURAND: We will hold over that clause.

Hon. Mr. COTÉ: I think it would be a very good idea if some time were given to members to make a little study of their own. After we finish to-night we could adjourn until Monday. By making haste slowly we shall move quickly. That is really the very best method. I am not making the motion now, but I may make one later on, that when we adjourn to-night we meet again Monday. That would give us to-morrow for making our own study of the Bill.

Hon. Mr. DANDURAND: Could we not work on the various clauses of the Bill now?

Hon. Mr. COTÉ: Some of us on the Committee want to look up the legal interpretations, the cases. There is a constitutional aspect. One very important point is as to the meaning of "is likely to operate." That goes to the very essence of this Bill. I submit the Committee should not deny me nor any other member who want to study this question an opportunity to study it.

Hon. Mr. DANDURAND: Then, I make this suggestion, that we go through the Bill—

Hon. Mr. COTÉ: I should be inclined to move, when we rise to-night, that we adjourn until Monday night.

Hon. Mr. DANDURAND: I should not be disposed to accept that. I should be disposed to accept this alternative suggestion, that we work on this Bill this evening and to-morrow and pass the clauses which are not contentious.

Right Hon. Mr. MEIGHEN: The whole Bill is contentious.

Hon. Mr. COTÉ: The whole Bill is a structure. You cannot segregate one clause from another.

Right Hon. Mr. MEIGHEN: It has hardly a family resemblance to the old Act.

Hon. Mr. DANDURAND: What do you say to that idea, Mr. Rogers, that there remains hardly any resemblance to the old Act?

Hon. Mr. ROGERS: I should hope certainly, that there is a family resemblance. How close the resemblance is, is probably a matter of opinion. It was suggested at the Committee meeting this afternoon that clause 2 should stand for further consideration. Senator Coté expressed a wish to have some citations with regard to the legal interpretation of the words "is likely to operate." We are prepared to give him those citations as soon as possible. Beyond that I think it will be quite apparent from the explanatory notes that many of the sections are precisely the same as in the 1935 Act, and that as far as others are concerned, the difference consists of the substitution of the word "commissioner" for "commission."

Right Hon. Mr. MEIGHEN: Oh, your Bill takes the whole operation out of the quasi judicial place where it is to-day and makes it the job of an official of a minister. That is vital, and of gigantic consequence. That is the main purpose. It not only does that, but it clothes this official with a power that the quasi judicial man never had at all.

Hon. Mr. ROGERS: May I suggest that in neither the Dominion Trade and Industry Commission Act or the Tariff Board Act is there any requirement that the Chairman should be a member of the Bar.

Right Hon. Mr. MEIGHEN: No, but the Premier gave assurance that he would be—and he is.

Hon. Mr. ROGERS: But there is nothing in the Act.

Right Hon. Mr. MEIGHEN: The Bill was passed on that understanding. There is a tremendous difference.

Hon. Mr. ROGERS: On the other hand, if for any reason Judge Sedgewick should find it necessary to resign, there is absolutely nothing in the requirement in the Act; and I would suggest that the commissioner appointed under this Bill is appointed, after all, subject to certain duties imposed upon him, and there is no security in the tenure of his office which would enable him to carry out his duties in an oppressive way. If he did, undoubtedly there would be strong pressure upon the Government to have him removed.

Right Hon. Mr. MEIGHEN: Why take a man that is—

Hon. Mr. ROGERS: The Dominion Trade and Industry Commission was set up in a way which did not distinguish it, so far as personnel is concerned, from the Tariff Board of Canada. Actually the Tariff Board has before it now a sufficient number of references to keep it fully occupied. I doubt very much if the Tariff Board in its capacity as an industrial and trade commission would be able to give the attention required.

Right Hon. Mr. MEIGHEN: Has the Chairman intimated that his Board is not able to discharge its duties?

Hon. Mr. ROGERS: The Chairman was not asked specifically to give that opinion when this Bill was before the Commons in committee. All I can say is that the Tariff Board has been fully occupied.

Right Hon. Mr. MEIGHEN: If he has not, I do not know why the Government should assume that he cannot discharge the duties.

Hon. Mr. LYNCH-STAUNTON: May I make a suggestion brought about by the suggestion of the leader, Mr. Dandurand? I have written down a phrase here which is not meant to be inflammatory but to give an idea of what I am going to suggest. I say that there is no Criminal Code in the civilized world which makes a human being liable to be found guilty of a criminal offence and subject to fine or imprisonment without proof of criminal intent, or of such recklessness of the consequences of his act as amounts to criminality.

In my opinion this legislation, as it stands, shocks the conscience of civilized man. It would make this Bill more palatable if we began by amending section 32 so as to allow the innocent—the admittedly innocent—to escape the result of a prosecution. I want to protect the admittedly innocent, and I think that would be accomplished by amending section 32 in this way:—

> Strike out all the words in section 32 after the words "one hundred thousand dollars," and substitute the words "who is a party or privy to or assists in the operation of a combine which to his knowledge is against the public interest."

Now, if those words were added in the Act, and produced the results I anticipate they would produce, it would just mean this: that the commissioner or the person in charge could go into all the things provided in the Act as now drawn. He could make all the investigation; he could do anything which the Bill provides he may do, and he could follow the practice entirely as laid down here on such investigation. But in the result nobody is brought before the criminal court unless he is a party to or privy to an act, or assist in the operation of a combine which to his knowledge is against public interest.

I do not think anybody wants to see an admittedly innocent man indicted; but they could investigate all the innocent men in Canada, all the combinations of every nature and kind. The object of the Bill is to stop what the Government thinks are improper combines, and to put an end to them. It is not to dragnet the community for the purpose of finding a man to indict, because indicting anybody or punishing anybody does not stop crime. We know that. It may check it.

Right Hon. Mr. Graham: Not even hanging?

Hon. Mr. Lynch-Staunton: No.

Hon. Mr. Griesbach: It stops the man hanged.

Hon. Mr. Lynch-Staunton: The point I am trying to make is that we should not be able to prosecute an admittedly innocent man. We can investigate to our heart's content, but the consequence of our investigation, or the knowledge which we get by it, should not permit an admittedly innocent man to be indicted; and if the innocent man were indicted he could not be convicted. I think that is only civilized justice. It is only proper that the innocent should never be in danger, and this would prevent our indicting people who, under this Bill, could be indicted and who are as innocent as any man possibly could be.

The definition of "conspiracy" is not a definition at all. It is an essay. A definition is language which precisely defines something. "Definition" is a dictionary word, and the dictionary says that to make a definition we must use as precise language as we can. If we are defining an act for which a man can be indicted, we should be as precise as we can be.

The Bill makes a man guilty of a conspiracy who has done nothing illegal, who has done nothing in the world for which he could be held responsible in any criminal court. It is not the purpose of the Bill to discover crime. If it were, it would be unanswerable, or might be if we adopted the continental mode or the New York method of the third degree. If we think that is desirable, it can be done here. But unless using this third degree Act, we find out he has knowingly done something against the public interest, we should not be able to indict him. I suggest that if we consider that section first and amend it as I propose, we would be freer to allow what is called the definition of a combine to pass, and I think we would avoid many of the evil consequences which would arise from the enactment of this provision. I certainly would never agree to pass that definition of a combine as long as the penalty section remains.

Right Hon. Mr. Meighen: I want to say a word on the general conduct of the whole matter. When I realized what the Bill was this morning, when it

came to us for the first time, I made the statement to the committee that I was of the view that it was little less than outrageous to ask us to deal with it just as the session was drawing to a close—believing, as I did, and as the leader opposite did, that we would close this week. The leader said that in any event he thought we ought to give our time to it for the rest of the week, and thus give an evidence that we would do the best we could. To that I agreed. But now an entirely new attitude has developed on the part of the Government, and we are notified that the House of Commons is going to sit until we are through with this Bill. If so, I want to study the debate in the other House, and I want also to study this measure from several angles. We are only wasting time as far as I am concerned until I have had an opportunity of doing that.

I do not ask time for any leisurely study. I am ready to work as hard as anybody, but I do not consider coming here and talking is necessarily working. I want to work at the Bill intelligently, and then give such time as we can to getting along with it here.

I have taken quite a number of lectures from the leader of the present Government on the terrible vice of bringing down legislation in the last days of the session. There never was an instance of this vice so conspicuous, so shocking as this instance. That does not mean that I cannot deal with the Bill. I will deal with it the best I can. But I do protest against going on morning, noon and night with this clause and that clause. We are just looking at the trees; we have not seen the woods. I am ready to come back next week. I have arranged everything otherwise, but I cannot help it, I shall just have to do the best I can. We are sitting here in the morning, afternoon and evening, and we are not fit to work, that is, to do anything that is really of value.

The CHAIRMAN: Have you a motion to put, Senator Meighen.

Right Hon. Mr. MEIGHEN: I am not putting a motion. I do not think it would be quite right to ask the leader of the Government not to sit to-morrow, but if we do sit to-morrow we should not sit on Saturday. We should come back Monday and get to work. It is amazing to me that the Government, intending to conclude the session this week, should put a Bill of this kind before us and expect us to deal with it adequately in the short space of time now available.

Hon. Mr. DANDURAND: We must take the necessary time.

Right Hon. Mr. MEIGHEN: If we handle this Bill as thoroughly as we handled the Insurance and other Bills we could never get through next week. Of course, we can work harder than we worked on those measures, but we worked pretty steadily on those occasions. The Government cannot wait past next week. You would think the country will be in a terrible state unless this Bill goes through right now. We have been passing a Bill of this kind every session, certainly the session before last. It seem to me that the work is now in the hands of what is undoubtedly as competent a court as you can get without its being constituted under the B.N.A. Act by provincial authority, and that you cannot ask for. But the Government is in a great hurry to get the work out of the hands of the court and into the hands of its officials. Where is it now?

Hon. Mr. ROGERS: In the President of the Privy Council.

Right Hon. Mr. MEIGHEN: Why should it not stay there under the Prime Minister as Minister, but in the hands of officials in whom undoubtedly the public has confidence?

Hon. Mr. ROGERS: That is not material. We have not yet come to section 2. When we do I am prepared to discuss that.

Hon. Mr. LYNCH-STAUNTON: I should not be satisfied to leave this to the best judge on earth in the shape it is now.

Right Hon. Mr. MEIGHEN: I do not see any value in going on to-night if we are to stay here until we get through this Bill as well as we are able to.

Hon. Mr. ROGERS: I should like to say that on two occasions to my recollection we postponed discussion of the Bill in Committee of the Whole in order to meet the convenience of Mr. Cahan, who is very much interested and wished to speak upon it. I mention that simply to show the delay has not been entirely due to the Government.

Right Hon. Mr. MEIGHEN: Those things always do occur. But you have never heard the public interested in this Bill, you have never had a committee on it. We always do that here if anyone wants to be heard. I do not know of a single exception.

Hon. Mr. ROGERS: As far as the underlying principle of the Bill is concerned, I have tried to point out before to the committee that it is not new. I also gave extracts from the judgment of the Privy Council in the P.A.T.A. case in 1921, which I should have thought set at rest any question as to the validity of the substantive portions of the legislation now before the committee.

Right Hon. Mr. MEIGHEN: As to the power to create a crime unless the creation of it is for another purpose.

Hon. Mr. ROGERS: The Privy Council said:—

> But if the main object be intra vires the enforcement of orders genuinely authorized and genuinely made to secure that object are not open to attack.

Right Hon. Mr. MEIGHEN: That is not the beginning nor the end of the question at all.

Hon. Mr. ROGERS: I quite agree it is not the end of the question, but at all events I think that observation does indicate there is much to be said in support of the provisions which relate to the carrying on of the investigation. Naturally the Government is very anxious to have this Bill given the best possible consideration before it is enacted. So far as the present sitting is concerned, that is entirely beyond my power, even by way of suggestion. I am here, I take it, at the invitation of the Committee of the Senate to answer such questions as you desire to put to me.

Hon. Mr. HAIG: How long was this in the House of Commons?

Hon. Mr. ROGERS: It came down some weeks ago and was printed and available, I think I might say, to members of the Senate as well as of the House of Commons in the form in which it was originally introduced.

Right Hon. Mr. MEIGHEN: We had other work here. We cannot anticipate Bills.

Hon. Mr. ROGERS: I have no doubt that is true, but it does seem to me that when a Bill comes to the House of Commons it may be expected to come to the Senate. The changes in the Commons were not, I submit, of a very drastic character.

Right Hon. Mr. MEIGHEN: Is it your argument that we should start to study a Bill as soon as it is brought down in the House of Commons? I should like you to present that to your leader. It would be a new doctrine to him.

Hon. Mr. ROGERS: No. I am simply submitting that I am entirely in the hands of the committee. I am, of course, ready to be here when it will suit the convenience of the committee, despite the fact—I take it it is not of importance here—that there are estimates of the Department of Labour which have been delayed in consequence and might otherwise have been brought before the Commons. We are anxious naturally to have the Bill proceeded with as soon as it can be done properly and decently. I assume it is for the committee here to decide how best that end can be achieved. But I do think I am entitled to point out the underlying principle of the Bill is not new—I repeat that now—and that many of the sections are substantially, even exactly, the same as they were in the 1930 Act which received approval of the Senate.

Hon. Mr. DANDURAND: What is the principal change?

Hon. Mr. ROGERS: It is in the transfer of the administration from the President of the Privy Council to the Minster of Labour.

Hon. Mr. LYNCH-STAUNTON: Is not the definition of a combine absolutely new?

Hon. Mr. ROGERS: Oh, no, not at all.

Right Hon. Mr. MEIGHEN: It is new in a very important feature. If that is all you can say, it is a good deal. You are taking all the investigational provisions out of the Trade and Industry Commission, which administers the Act, and transferring them to a Government officer. You say that is the same principle as the other?

Hon. Mr. ROGERS: Prior to 1935 these powers of administration were vested in the—

Right Hon. Mr. MEIGHEN: They were not the same powers as those in the Trade and Industry Commission Act.

Hon. Mr. ROGERS: They were the same.

Right Hon. Mr. MEIGHEN: But they were not as extensive.

Hon. Mr. ROGERS: I thought we might proceed with the Bill, particularly with those clauses which do not represent a change from the previous legislation. That, of course, is a matter for the committee to determine.

Right Hon. Mr. MEIGHEN: We ought to get a look at the Bill.

The CHAIRMAN: I would make this suggestion. This is a Bill which essentially must be analysed by those trained in the law. Most of the lawyers of this committee do not seem to be sufficiently acquainted with the Bill even to take it up clause by clause. Until they know the nature of the Bill would it not be better to adjourn until not only the lawyers but the other members of the committee have an opportunity to study and become better acquainted with the Bill?

Hon. Mr. BEAUBIEN: And are ready to go on.

Right Hon. Mr. MEIGHEN: I think I can get an intelligent view of the Bill by to-morrow afternoon, but I have none now.

The CHAIRMAN: We are not getting anywhere in advancing the Bill. Had we not better adjourn until after the House meets to-morrow afternoon?

Right Hon. Mr. MEIGHEN: Give us to-morrow morning to really study the Bill.

Hon. Mr. DANDURAND: I draw your attention to this situation. We are offered this Bill as part of the Government's program. I do not know whether it was announced in the Speech from the Throne.

Hon. Mr. ROGERS: Oh, yes, it was.

Hon. Mr. DANDURAND: It was announced in the Speech from the Throne as the policy of the present Government to transfer the administration of the Act from the Board to which it had been given in 1935, only two years ago, to the Department of Labour. That is one of the important principles.

Right Hon. Mr. MEIGHEN: I do not think anybody would object to that as long as you maintain the machinery of administration as it is now.

Hon. Mr. DANDURAND: I want to put this question. From the remarks of my right honourable friend I assumed that he was totally adverse to the idea of transferring the administration of the Act to the Department of Labour under the form indicated in the Bill.

Right Hon. Mr. MEIGHEN: No, no. I do not mind the Minister being substituted for the President of the Privy Council, but I do think it is an exceed-

ingly serious step to transfer the powers which are now vested in and the duties that are now administered by a board presided over by a Supreme Court. Judge to an official of the Department. That is a different thing.

Hon. Mr. DANDURAND: That is a most important change from the Act.

Right Hon. Mr. MEIGHEN: A very important change.

Hon. Mr. DANDURAND: Yes. But if this committee decided against that change, it would be for the Minister of Labour to decide if it was worth while continuing examination of the Bill. It seems to me there are vital questions which may divide us, and which would settle and stop our work. That is why I wonder whether we should not proceed. If the Senate takes a directly opposite view to that of the Commons, then it will be for the Minister of Labour to report to his colleagues and decide as to what should be the fate of the Bill.

Right Hon. Mr. MEIGHEN: I could form an intelligent opinion much more rapidly if I could read the Bill carefully first and the debate in the Commons. I have not been able to read more than one page of that debate, and I should say there are forty or fifty pages of it on my desk. When am I going to do it?

Hon. Mr. DANDURAND: When do you think you will be ready?

Right Hon. Mr. MEIGHEN: I think I can get it up to the point where I should be ready to have a detailed discussion here, say, to-morrow afternoon.

Hon. Mr. DANDURAND: After the sitting of the Senate?

Right Hon. Mr. MEIGHEN: Yes.

Hon. Mr. MORAUD: Then we would carry on on Saturday? It would not be much use sitting to-morrow afternoon and then adjourning to Monday.

Hon. Mr. DANDURAND: It depends. My right honourable friend and other members of the Senate will have time to study the Bill and make up their minds as to what will be their attitude after, say, four o'clock to-morrow. We may sit from four to six and again in the evening, and if we found we could wrestle with the principal difficulties which are being offered, we might decide to sit on Saturday. I suppose a number of our colleagues would be quite happy to leave here on Saturday, although I am not suggesting they should hurry. I shall be on the job myself next week.

The CHAIRMAN: Does it meet with the approval of the Committee that we adjourn now and resume after the Senate rises to-morrow?

Right Hon. Mr. MEIGHEN: I am quite agreeable to that. But I do not want to agree to meet Saturday. We are not time servers here. During the session, of course, we should do what we can to expedite the work before us. But, expecting that the Session would be over—and, as the honourable senator opposite knows, having good reason for expecting that—I arranged definite work for Monday and Tuesday. To impose a little of my private difficulty on the Committee, I will say this. I have arranged no fewer than six directors' meetings for those two days, including two annual meetings, and not of companies of which I just happen to be a director, for such do not exist, but of companies for which I am mainly responsible. Even under these circumstances it is too much to ask that we shall not sit on Monday and Tuesday. But I do not know how in the world I can arrange about these meetings unless I can have Saturday to try to make some arrangement.

Hon. Mr. DANDURAND: I may scandalize some of my colleagues by what I am about to say, but perhaps the press will not report this. We could proceed to-morrow afternoon and evening and Saturday, and we could give a few hours to the drafting of our conclusions on Sunday. There are more profane things that we often do. I am suggesting that course, in order that my right honourable friend might feel we are not forcing him to come back next week. I am absolutely in the hands of the Senate.

Right Hon. Mr. MEIGHEN: If the Government has decided that we have to get through with this Bill and report it next week, if that is in the nature of an ultimatum, we shall have to sit through next Monday and Tuesday, no matter what our engagements are.

Hon. Mr. DANDURAND: We can decide to-morrow what we shall do on Saturday.

The CHAIRMAN: Is it the pleasure of the Committee to adjourn now and reassemble after the House rises to-morrow afternoon?

Hon. Mr. DANDURAND: I am sorry that I did not move this afternoon to have the Senate meet to-morrow morning. Then I could have got through with an item that stands in my name on the Order Paper.

Hon. Mr. COTÉ: If we are free to-morrow morning we shall have time to study this Bill, to look up judicial decisions, and so on.

The CHAIRMAN: Is it your pleasure that we adjourn now and reassemble after the Senate rises to-morrow afternoon?

Some. Hon. SENATORS: Carried.

The Committee adjourned at 9.20 p.m. to meet after the Senate rises to-morrow afternoon.